

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATRICIA CUMMINGS,

Plaintiff,

Docket No. 19-cv-07723 (CM)

-against-

THE CITY OF NEW YORK;
NEW YORK CITY DEPARTMENT OF EDUCATION;
GIULIA COX; COURTNEY WARE; BEN CHAPMAN;
NEW YORK DAILY NEWS; DR. ANDRE PERRY;
THE HECHINGER REPORT a/k/a HECHINGER
INSTITUTE ON EDUCATION AND THE MEDIA;
LENARD LARRY McKELVEY a/k/a
CHARLAMAGNE THA GOD;
WWPR-FM (105.1 MHZ); iHEARTMEDIA;
CLEAR CHANNEL COMMUNICATIONS, INC.;
NEW YORK STATE SENATOR, KEVIN S. PARKER;
COALITION OF EDUCATIONAL JUSTICE;
ANGEL MARTINEZ2; NATASHA CAPERS;
PHILIP SCOTT; ADVISE MEDIA NETWORK
n/k/a AFRICAN DIASPORA NEWS CHANNEL, and
"JOHN DOE AND JANE DOE # 1-100" said names
being fictitious, it being the intent of Plaintiff to designate
any and all individuals, officers, members, agents, servants,
and/or employees of the aforementioned agencies owing a
duty of care to Plaintiff, individually and jointly and
severally,

Defendants.

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**DECLARATION OF THOMAS F. LIOTTI IN OPPOSITION TO
DEFENDANTS' HECHINGER INSTITUTE ON EDUCATION AND
THE MEDIA AND DR. ANDRE PERRY'S
MOTION TO DISMISS THE AMENDED VERIFIED COMPLAINT**

THOMAS F. LIOTTI, ESQ., hereby declares pursuant to 29 U.S.C §1746:

1. I am the principal attorney with the Law Offices of Thomas F. Liotti, LLC, attorneys for the Plaintiff, PATRICIA CUMMINGS ("Plaintiff"), and I am admitted to practice in this Court. As such, I am fully familiar with the facts and circumstances of this matter.

2. I submit this Declaration together with the Plaintiff's Memorandum of Law in Opposition to the Hechinger Institute on Education and the Media, an institute of Teachers College, Columbia University (the "Hechinger Institute"), and Dr. Andre Perry ("Dr. Perry," collectively, the "Hechinger Defendants"), Rule 12 (b) (6) motion to dismiss the Amended Verified Complaint in its entirety and with prejudice; and for such other and further relief as this Court deems to be just and proper.

3. I have attached hereto the following Exhibits, which are referenced in the accompanying Memorandum of Law in Opposition:

- Exhibit A: Redacted Copy of Office of Special Investigations Investigative Report (OSI) dated July 24, 2018;
- Exhibit B: Plaintiff's rebuttal correspondence addressed to Community Superintendent Maribel Torres-Hulla dated October 5, 2018;
- Exhibit C: Plaintiff's Amended Verified Complaint dated May 28, 2020;
- Exhibit D: Chart of Contextual Background of Hechinger Defendants.

4. The Plaintiff was a probationary New York City Public School Teacher at The William W. Niles School - Middle School 118, Community School District 10, in Bronx County, New York. She seeks damages related inter alia to defamation, defamation *per se*, slander, slander *per se*, libel, libel *per se*, and false light against the Hechinger Defendants.

5. As result of what was fallaciously reported concerning an alleged complaint made by a parent of a student regarding a lesson taught by Plaintiff in her social studies class on the Middle Passage, Plaintiff subsequently and unwillingly became the subject of a front page false accusations her of being a "racist" and "*making black students lie face down on the floor of her class, and asking them '[H]ow does it feel to be a slave?'*" As a result, this fabricated and erroneous

set of “facts” was picked up by the media worldwide and transmitted to various news outlets and appeared online and in media all over the world.

6. The arguments proffered by Plaintiff in the accompanying Memorandum of Law sufficiently dispute the Hechinger Defendants’ unsophisticated attempt to argue *inter alia*, that the subject broadcast is non-actionable opinion, as well as his attempt to hide behind the First Amendment. Thus, Plaintiff presents herein a sufficient basis for a denial of the Hechinger Defendants Motion to Dismiss.

7. Based on the foregoing the relief requested by the Hechinger Defendants should be denied in its entirety; and such other and further relief should be granted to the Plaintiff, as to this Court may seem just and proper.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: Garden City, New York
August 20, 2020



THOMAS F. LIOTTI (TL4471)